



DEPARTMENT OF THE ARMY  
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND  
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7 April 2016

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street N.W  
Washington, DC 20423

Re: DoD Reply Regarding Canadian Pacific Railway Limited - Petition for Expedited  
Declaratory Order (Docket No. FD 36004)

Dear Ms. Brown:

The Surface Transportation Board sought replies addressing Canadian Pacific's petition for an expedited declaratory order. Enclosed, please find the reply from the Military Surface Deployment and Distribution Command (SDDC).

Should any questions arise regarding SDDC's reply, please do not hesitate to contact me at (618) 220-5796 or via e-mail at [david.j.dicenso.civ@mail.mil](mailto:david.j.dicenso.civ@mail.mil). Thank you for your consideration of the enclosed.

  
DAVID J. DICENSO  
Attorney-Advisor

SURFACE TRANSPORTATION BOARD  
CANADIAN PACIFIC RAILWAY LIMITED—  
PETITION FOR EXPEDITED DECLARATORY ORDER  
[DOCKET NO. FD 36004]

COMMENTS FROM  
RAILROADS FOR NATIONAL DEFENSE PROGRAM  
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND  
TRANSPORTATION ENGINEERING AGENCY

This statement is in regard to the Surface Transportation Board Federal Register Docket Number FD 36004 which was published in the Federal Register on March 16, 2016. This is a request for replies to Canadian Pacific Railway Limited's (CPRL) petition requesting that the board issue a declaratory order on two issues pertaining to a potential merger between CPRL and Norfolk Southern Railway Company (NSR).

On behalf of the Department of Defense, the Military Surface Deployment and Distribution Command (SDDC) has an ongoing interest concerning proposed changes to the North American railroad network.

By way of background, the Transportation Engineering Agency of SDDC (SDDCTEA), through the Railroads for National Defense (RND) Program, works with each military Service to identify its requirements for civil sector rail service. The Services' needs and requirements are then integrated into civil sector plans. The October 2013 report, "Strategic Rail Corridor Network (STRACNET) and Defense Connector Lines", is the formal document that designates civil rail lines most important to national defense. This designation comprises over 36,000 miles of integrated and interconnected lines for the movement of defense cargo throughout the United States in peace and war. There are approximately 120 military installations and other locations involved in the movement of defense forces and material to ports of embarkation for deployment. These sites require rail service to accomplish their assigned mission and are served by lines designated as part of the STRACNET and connectors between STRACNET lines and military installations and critical ports. CPRL and NSR own and operate hundreds of miles of STRACNET and both railroads directly serve major military installations which require rail service to perform their missions.

It is too early to determine whether either a CPRL+NSR merger itself, or a downstream merger involving other major railroads, would degrade national defense. However, the potential certainly exists for either the CPRL+NSR merger or a downstream merger to adversely affect national defense. Therefore, it is critical that no common control of CPRL and NSR occur prior to the Board ruling that such common control, and the merger that cements it, is permissible. Such a ruling should certainly consider the effects of both the CPRL+NSR merger, and any resultant downstream mergers, on national defense.

While, at this point, the Board need not rule on common control in evaluating a declaratory order on the two issues raised by CPRL, the Board must carefully consider whether the declaratory order creates an irreversible move forward toward de facto common control.

We are troubled by the possibility that Mr. Harrison could become a senior executive at Norfolk Southern in advance of the Board ruling in favor of common control/merger between Canadian Pacific and Norfolk Southern. If Mr. Harrison is a senior executive at NSR he may be placed in a position where he must make business decisions with potentially competing interests. He may make a certain decision that would benefit NSR if it remains an independent railroad, or a decision that would benefit NSR only if it becomes part of CPRL. This seems to be an untenable position for Mr. Harrison (or any other executive that would be swapped between NSR and CPRL). Certainly, one would expect Mr. Harrison, working as the executive agent of NSR to make decisions that would benefit NSR while presuming it would remain an independent company. But placing him in this position could prove to be untenable due to the appearance of common control in advance of the Board's decision on the matter.

We would like to emphasize that our interest is in national defense effects, either in a possible merger between Canadian Pacific and Norfolk Southern or any responsive downstream merger. We ask the Board to rule on the CPRL petition in a way that does not permit de facto common control to occur before legal common control is thoroughly analyzed and approved.



DAVID P. DORFMAN, P.E.  
Senior Civil Engineer  
Railroads for National  
Defense Program

## CERTIFICATION OF SERVICE

I hereby certify that on this date I caused copies of the foregoing Reply to Canadian Pacific Railway Limited - Petition for Expedited Declaratory Order -Concerning Theoretical Voting Trust upon the following by First Class Mail:

Ms. Sandra L. Brown,  
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I hereby certify that on this date I caused copies of the foregoing Reply to Canadian Pacific Railway Limited - Petition for Expedited Declaratory Order - Concerning Theoretical Voting Trust upon the following by electronic mail:

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April 7, 2016

  
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